

OFFICE OF THE MAYOR  
SAN FRANCISCO



WILLIE LEWIS BROWN, JR.

April 6, 2001

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San Francisco, CA 94105-3901

Mr. Chein Kao  
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700 Heinz Avenue, Suite 200  
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Mr. Brad Job  
California Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, #1400  
Oakland, CA 94612

Richard G. Mach, Jr., P.E.  
BRAC Environmental Coordinator  
Department of the Navy  
Southwest Division  
1220 Pacific Highway  
San Diego, CA 92132-5190

Re: Hunters Point Shipyard - Parcel B - Land Use Controls Implementation  
Plan (LUCIP)

Dear BCT members:

This letter provides comments on the Final Draft, Revision 1 Land Use Implementation Plan (LUCIP) dated March 6, 2001. This plan and the documents it discusses are of critical importance to the City. The City has previously provided substantial comments to the BCT on the LUCIP on: June 15, 2000; October 3, 2000; and January 16, 2001. In addition, we have had numerous discussions and meetings with the BCT member agencies, community and developers regarding these issues. While we recognize and appreciate the progress made on the LUCIP, there are still major outstanding issues, as well as new issues raised due to changes in the LUCIP. For example, neither the Navy nor the Department of Toxic Substances Control (DTSC) has provided the City with a draft of the covenant for enforcement that the Navy and DTSC intend to execute. The City has been given no opportunity to participate in the drafting process.

Further, the Navy continues to have a basic factual and legal misunderstanding about the City's potential role. The Navy's overall theme of the LUCIP is to rely on the City to enforce the restrictions. Specifically, section 7.0 of the LUCIP makes several misstatements. First, it states that, "if the City declines to take the property, the monitoring of the restrictions will be the

primary responsibility of the Navy and DTSC." The statement infers that, if the City does take the property, neither the Navy nor DTSC (nor any other BCT member) would have primary responsibility for monitoring land use restrictions. As a matter of law, the Navy is and forever will be responsible for monitoring the restrictions. Nevertheless, the Navy does not propose to conduct any monitoring program. The Navy's statement that the City will bear responsibility for monitoring and enforcement of land use controls is troubling to the City and should be troubling to BCT members.

We see no legal impediment to the Navy shifting this responsibility to DTSC if the BCT members agree that this is appropriate. Under no circumstances, however, would the City ever be the enforcer of the restrictions. The City will be *subject* to the restrictions for the length of time it owns the property. Once the City no longer owns property, it will have neither enforcement obligations nor responsibility for monitoring. Since the City is not a party to the LUCIP and has no approval authority over it, the City fails to see how BCT members can approval a LUCIP that is predicated on the City taking on responsibilities that it has not and will not agree to shoulder.

Second, section 7.0 states that, if the City "takes title to the property, as the Grantee, the City will have an integral role in monitoring, reporting and enforcing the land use controls through its administration of soil and groundwater management plans". This statement displays a lack of understanding of how the City envisions that the soil and groundwater management plan relates to the land use controls. Subject to resolution of outstanding issues, the City is willing to develop and implement a global soil and groundwater management plan to serve as another layer of enforcement for deed restrictions *during the redevelopment process and pursuant to the City's local police powers*. The City's regulatory authority stems from its municipal powers and not from CERCLA. The role that the City would take on under the soil and groundwater management plan is limited to activities related to issuance of building and other development permits. This is a quite different, and more limited role, than the one that the Navy bears as the entity responsibility for monitoring and maintaining land use controls under all circumstances and in perpetuity.

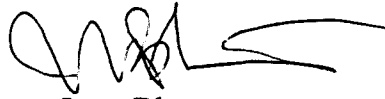
As noted above, the City would create and administer a soil and groundwater management plan in its regulatory capacity. Thus, for purposes of the soil and groundwater management plan, it is immaterial whether the City ever takes title to the property or not. We also note that, while an attempt is made to spell out the City's role, the specific roles of the Navy, DTSC, EPA and the Regional Board are not discussed.

Rather than repeat all of our prior comments and raise new ones here, we believe that a meeting or series of meetings is essential to resolving these issues. We agree that the monitoring of restrictions should be a "collaborative effort" as stated in the LUCIP and to that end, expect to be fully involved in developing the LUCIP. This includes involvement in future drafts of the LUCIP and its supporting documents, including the DTSC/Navy covenant. I will be contacting each of the BCT members to set up meetings to discuss the issues that are still of concern to the City.

Finally, pursuant to the December 14, 2000 LUCIP meeting, we understood that the BCT agreed not to finalize the LUCIP before the soil and groundwater management plan and the Navy-DTSC covenant have been drafted and reviewed by the parties. We are working diligently on the soil and groundwater management plan and expect to have a draft to the BCT this summer. In light of the revised FFA schedule indicating a February 2002 transfer date for Parcel B, we do not see the need to rush finalization of the LUCIP by May 15th.

Please feel free to call me directly with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Jesse Blout', with a long horizontal stroke extending to the right.

Jesse Blout  
Development Project Manager

cc: See Attached list

Don Capobres  
George Schlossberg  
Michael Cohen  
Rona Sandler  
Elaine Warren

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QUESTIONS MAY BE DIRECTED TO:

**DIANE C. SILVA  
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SOUTHWEST DIVISION  
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1220 PACIFIC HIGHWAY  
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